

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF MICHIGAN

SAWARIMEDIA, LLC, DEBORAH
PARKER, JUDY KELLOGG, AND
PAUL ELY,

Plaintiffs,

Case No 4:20-cv-11246-MFL-MJH

v

GRETCHEN WHITMER, Governor of
Michigan JOCELYN BENSON,
Secretary of State, JONATHAN
BRATER, Director of Elections, and
BOARD OF STATE CANVASSERS, in
their official capacities,

Defendants.

DECLARATION OF JONATHAN BRATER

I, Jonathan Brater, state as follows:

1. I have been employed by the Secretary of State as Director of Elections since January 2, 2020 and in such capacity serve as Director of the Bureau of Elections (Bureau). See M.C.L. § 168.32.

2. I bring this declaration in support of Defendants' Response to Plaintiffs' Motion for a Temporary Restraining Order or for a Preliminary Injunction. If called as a witness, I could testify truthfully and accurately as to the information contained within this declaration.

3. I am personally knowledgeable about provisions of the Michigan Election Law and Michigan Constitution that govern the canvass of statewide petitions for the initiation of legislation. Additionally, I have personal knowledge of the federal and state laws governing ballot printing and distribution deadlines, particularly those that are relevant to military and overseas civilian absent voter ballots.

4. An initiative petition must “be filed with the Secretary of State at least 160 days before the election at which the proposed law is to be voted on.” M.C.L. §168.471. This deadline is May 27, 2020 for this election cycle.

5. In order to be counted, a signature on an initiative petition must be made no more than 180 days before the petition is filed with the office of the Secretary of state. The 180 days runs back not from the May 27, 2020 deadline for filing the petition, but rather from the date that the petition was actually filed. M.C.L. §168.472a.

6. The Board of State Canvassers must complete the canvass of an initiative petition on or before the 100th day prior to the November general election, as (a) the Board of State Canvassers must approve ballot wording and assign a numerical ballot designation (i.e., “Proposal 20-1”) at least 60 days prior to Election Day, or by September 4, 2020 (see M.C.L. §§ 168.480 and 168. 474a); and (b) the Legislature is afforded a period of 40 session days in which to enact the

proposal, reject the proposal, or reject the proposal and submit an alternative proposal on the same subject to the electorate (see Mich. Const. 1963, Art. 2, § 9).

In order to comply with these deadlines, the canvass of Plaintiffs' initiative petition must be completed on or before July 24, 2020.

7. Statewide ballot proposal petitions filed with the Secretary of State are canvassed through random sampling, the process by which the Board of State Canvassers determines whether a sufficient number of valid signatures have been submitted in order to qualify for placement on the ballot.

8. Under the random sampling process:

- a. Every petition sheet is reviewed. Any petition sheet that is determined to be wholly invalid is set aside and excluded from the pool from which the samples are pulled.
- b. The remaining petition sheets are numbered and every signature appearing on numbered sheets is counted and added. This step yields the precise number of signatures that are within the pool of potentially valid signatures.
- c. Once the total number of signatures is ascertained, random signatures are selected from the numbered sheets by a computer program for comprehensive scrutiny. The size of the sample can range from approximately 500 to 4,000 signatures

depending on the number of excess signatures filed. Copies of the petition sheets containing signatures within the random sample are made available to the petition sponsor and potential challengers.

- d. Every petition entry within the random sample is reviewed for facial validity, a process by which Bureau of Elections staff examines each entry for fatal errors or defects, such as an incomplete address, a signature dated after the circulator's signature is affixed, and so on. Signatures that pass the facial validity examination are checked against the Qualified Voter File (QVF) to verify the signer's registration status.
- e. Challenges may be filed concerning the registration status of a signer or the authenticity of a signer's signature. M.C.L. §168.476(1). Under Board policy, a challenge must be filed within 10 business days of the date that copies of the petition sheets selected for the random sample are made available to potential challengers. The challenges are processed by comparing the challenges to the determinations rendered by staff under the facial validity and registration status examinations utilizing the QVF.

f. The computer program estimates the number of valid signatures contained in the filing based on the error rate found in the random sample, and a “Staff Report” is prepared. The Staff Report is presented to the Board of State Canvassers for consideration in determining whether the petition contains a sufficient number of valid signatures to qualify for placement on the ballot, and includes the staff’s recommendation regarding the disposition of any challenges filed against the petition. The Staff Report must be published “[a]t least 2 business days before the board of state canvassers meets to make a final determination on challenges to and sufficiency of a petition[.]” M.C.L. § 168.476(3).

9. It takes approximately 60 days to complete the random sampling and challenge process described above.

10. Once the Board of State Canvassers determines that an initiative petition contains a sufficient number of valid signatures, the proposed initiated law is transmitted to the Legislature.

11. If the Legislature does not enact the proposal within 40 session days, the Board of State Canvassers must prepare the proposal for the ballot by assigning a numerical ballot designation and approving ballot wording no later than the 60th

day prior to the election, which falls on September 4, 2020. M.C.L. §§ 168.474a, 168.480.

12. Additionally, the Secretary of State must certify the November 3, 2020 general election ballot—including any statewide ballot proposals—to Michigan's 83 County Clerks by the 60th day prior to the election, or September 4, 2020. M.C.L. § 168.648.

13. In turn, the 83 Boards of County Election Commissioners are responsible for preparing and printing ballots for the November general election. M.C.L. § 168.689.

14. The minimum number of ballots required to be printed for the general election by each County Election Commission equals the total number of registered voters at the close of registration. Mich. Admin. Code R. 168.774(6)(a). As of May 22, 2020, there are 7,704,305 registered voters in the State of Michigan. Accordingly, at least 7,704,305 ballots must be printed, but more will be required as the registration deadline has not yet passed and there may also be in-person registration through the day of the election. Mich. Comp. Laws 168.497.

15. Prior to printing, the Boards of County Election Commissioners are required to submit proof copies of each style of ballot used in their respective counties to the Secretary of State and to each candidate whose name appears on the ballot. M.C.L. § 168.711. The candidates are allotted two business days in which

to review the ballot proofs and notify the Board of County Election Commissioners of any corrections. *Id.* In addition, the Secretary of State reviews the ballot proofs for errors and if necessary, may require the Board of County Election Commissioners to make corrections. *Id.* Corrected ballot proofs must be submitted to the Secretary of State. *Id.*

16. Every county produces multiple ballot styles—often numbering in the dozens or even hundreds per county—for the general election, based on the geographic boundaries of the various elective offices that will appear on the ballot. For example, a precinct may be split into two different school districts or county commissioner districts, necessitating the printing of two different styles of ballot for that single precinct.¹

17. After the Secretary of State’s review is complete and after the expiration of the two business day period for candidates to review proof copies of the ballots and any necessary corrections are made, the Board of County Election Commissioners may proceed with ballot printing. *Id.*

18. Absent voter ballots must be delivered by the Board of County Election Commissioners to the County Clerk by the 47th day prior to Election Day, or by September 19, 2020. M.C.L. § 168.713.

¹ There are approximately 4,752 precincts in Michigan.

19. County clerks must deliver absent voter ballots to city and township clerks no later than the 45th day before the November General Election, or by September 21, 2020. M.C.L. § 168.714. Additionally, absent voter ballots must be available for distribution to all voters, and in particular military and overseas voters, no later than the 45th day before the November General Election, or by September 21, 2020. Mich. Const. 1963. Art. 2, § 4 (1)(b), M.C.L. § 168.759a. The deadline for distribution of absent voter ballots is governed by both the Federal Military and Overseas Voters Empowerment Act (MOVE Act), 52 U.S.C. § 20302(a)(8), and Michigan Election Law, M.C.L. §§ 168.714 and 759a.

20. Based on the above legal requirements and processes, the following table shows the timeline of pertinent dates leading up to the election:

Date and Time	Action	Statute
By 5:00 pm on May 27, 2020	Petitions for legislative initiative filed with Secretary of State (340,047 valid signatures required)	Mich. Comp. Laws § 168.471 Art 2, § 9
May 27, 2020 to July 23, 2020	Canvass of initiative petitions begins, including random sampling process; signature challenges permitted during this time period. (Canvassing may take up to 60 days)	Mich. Comp. Laws § 168.476
July 24, 2020	Board of State Canvassers to declare sufficiency or insufficiency of initiative petitions	Mich. Comp. Laws § 168.477
September 4, 2020	Board of State Canvassers must assign numerical designation and approve ballot wording for all statewide proposals, and Secretary	Mich. Comp. Laws §§ 168.474a,

	of State must certify the ballot to county clerks	168.480, 168.648
September 5, 2020	County clerks begin ballot proofing and printing	Mich. Comp. Laws § 168.689
September 19, 2020	Deadline for county boards of election commissioners to deliver AV ballots to county clerks for November Election	Mich. Comp. Laws § 168.713
September 21, 2020	Deadline for county clerks to deliver AV ballots to local clerks; deadline for AV ballots to be available for delivery to military and overseas voters	Mich. Comp. Laws §§ 168.759a, 168.714 Art. 2, § 4 52 U.S.C. § 20302
November 3, 2020	General Election	

21. I declare under the penalty of perjury that the foregoing is true and correct, based on personal knowledge.



Jonathan Brater